IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 610/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 29th September, 2006

Heard Shri L. H. Kothari, learned counsel for the appellant and Shri Surjuse, the learned counsel for respondent no.1. None appears for respondents 2 and 3 though served.

2. By this second appeal, the appellant takes exception to the Judgment and decree dated 26.07.2004 passed by the 4th Ad hoc Additional District Judge, Akola in Regular Civil Appeal No. 149/2001 dismissing the appeal filed by the appellant against the Judgment and decree dated 30.3.2001 passed by the Civil Judge, Senior Division, Akoal in Special Civil Suit No. 422/1998.

3. The appellant/ plaintiff filed above suit seeking recovery of the amount of Rs. 1,58,844/-. The plaintiff was serving as Assistant Teacher in one of the schools run by the defendant no.1 since for a quite long time and on 24.12.1978 she did graduation. At the relevant time she was having diploma in teaching course. According to

the plaintiff, she was entitled to get scale prescribed for the graduation since 24.12.1978. The plaintiff retired on 31.5.1994. The plaintiff filed the suit on 3.10.1998. The plaintiff filed the above suit claiming difference in salary on the ground that she was entitled to graduate scale right from 24.12.1978. The trial court after appreciating the evidence led by the parties dismissed the suit, inter alia, holding that the case was covered by article 7 of the limitation Act and, therefore, the suit was barred by limitation. In the appeal preferred by the plaintiff, the appellate court also held that the case of the plaintiff was covered by Article 7 of the Limitation Act and, therefore, confirmed the decree passed by the trial Court.

4. Mr. Kothari, the learned counsel appearing for the appellant submitted that the trial court as well as the appellate court erred in law in dismissing the claim set up by the plaintiff. According to Mr. Kothari, Article 7 of the Limitation Act is not attracted in the present case. The learned counsel further submitted that the cause of action for filing the suit arose in the year 1995 when the plaintiff came to know from the reply given by the respondent no.1 that her claim was rejected.

5. Per contra, Mr. Surjuse, the learned counsel appearing for respondent no.1 supported the findings given by both the courts below.

6. Having considered the submissions made by the learned counsel and having perused the impugned Judgments and orders, I do not find any merit in the submissions of Mr. Kothari the learned counsel for the appellant. The finding given by the trial court which has been confirmed by the appellate court that the case of the plaintiff is covered by Article 7 of the Limitation Act cannot be faulted. Admittedly, the plaintiff retired on 31.5.1994 and the suit came to be filed on 3.10.1998. The mere fact that in theyear 1995 the defendant no.1 informed the plaintiff that her claim was rejected after her retirement could not give her cause of action to claim difference in salary from from 24.12.1978 by filing the suit in the year 1998. Both the courts below were perfectly justified in giving finding against the plaintiff on the point of limitation. I find no perversity or illegality in the finding given by both the courts below on the issue of limitation In any case, I do not find any substantial question of law involved in the present appeal. Hence, the appeal is rejected.

Judge

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